IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 908 OF 2001

Mrs. Maureen D' oSuza . ... Appellant
VS.
Ram Shetty . ... Respondent

Ms. Bendra D' oSuza
i/b. M.P. Vashi & Associates for appellant.

CORAM: D. G. KARNIK **J.**

DATE: 13th October 2006

P.C.:

1. Heard learned counsel for the appellant. None present for the respondent.

2. This appeal is directed against the judgment and order dated 9th March 2001 passed in Notice of Motion No. 472 of 2001, rejecting the appellant's prayer for appointment of court receiver.

3. The suit premises is a room bearing no. 4, situated on the first floor of Nisha Chawl, Mahakali Caves Road, Andheri (East), Mumbai, admeasuring about 300 sq. ft. Prior to the

year 1992 the applicant was residing in the suit premises with her husband. She separated from her husband, took on rent the suit premises and started residing therein in the year 1992. Some time later appellant and the respondent, who is a married man with two children, started cohabiting in the suit premises. It appears that thereafter they got married in the year 1997, though there is a dispute between the parties regarding the marriage and its legality and validity. However, we are not concerned in this appeal with the said dispute. According to the appellant on 7th October 2000 the respondent beat her up. Therefore she filed a suit bearing S. C. Suit No. 7219 of 2000 against the respondent and took out two motions. Motion No. 6060 of 2000 was filed by her for the relief of injunction restraining the defendant from disturbing her possession of the suit premises and also restraining the defendant from creating any third party interest therein. Motion No. 472 of 2001 was taken out by the her for appointment of a court receiver. Both the motions were heard and by an order dated 9th March 2001 the learned judge of the City Civil Court allowed the appellant' smotion No. 6070 of 2000 and granted injunction restraining the respondent from disturbing her possession and from creating any third party interest in the suit premises. The learned judge however, dismissed the appellant' smotion No. 472 of 2001 for appointment of a

court receiver. Aggrieved by the order of refusal of appointment of a court receiver the plaintiff has filed this appeal.

4. The case of the appellant is that she is the tenant of the suit premises and the respondent has no right to use and occupy the suit premises. Though she was cohabiting with him for some time that would not create any right in favour of the respondent in respect of the suit premises. Respondent has no right to come in the suit premises against the wish of the appellant. This case found favour of the trial court and which accordingly granted injunction restraining the respondent from disturbing the possession of the appellant in the suit premises. The trial court has also restrained the respondent from creating any third party interest in the suit premises. In view of the fact that the respondent has already been injuncted from entering upon the suit premises and disturbing the appellant' s possession I do not think that there is any necessity of appointing a court receiver. Interest of the appellant is sufficiently protected. The respondent cannot disturb her possession. I do not see any reason for granting any further protection by appointment of a court receiver. The suit premises do not belong to the appellant. She is only a tenant. The original owner is not joined as a party to the suit, wherein a motion has been taken out for the

appointment of court receiver. It is not shown that injunction should not be sufficient to protect her interest. In the circumstances I do not see any reason to interfere with the order passed by the trial court. Hence appeal is dismissed but without any order as to costs.

(D.G. KARNIK J.)